

**EDUCATION DEPARTMENT[281]**

**Notice of Intended Action**

**Proposing rulemaking related to programs for students who are English learners  
and providing an opportunity for public comment**

The State Board of Education hereby proposes to rescind Chapter 60, “Programs for Students Who Are English Learners,” Iowa Administrative Code, and to adopt a new Chapter 60 with the same title.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code section 280.4.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code section 280.4.

*Purpose and Summary*

As part of the Department of Education’s review of rules under Executive Order 10, the Department proposes an overall reduced regulatory footprint by eliminating obsolete language, eliminating unnecessarily restrictive language, updating other language, and providing clearer guidance for nonpublic schools that serve English learners.

Iowa Code section 280.4 requires nonpublic schools to serve English learners; however, current Chapter 60 purports to require nonpublic schools to serve English learners only if those services can be provided by public school districts. This proposed chapter would require nonpublic schools to serve all English learners; however, the standard is to make minor adjustments. This requirement and standard are consistent with other laws under which nonpublic schools are expected to provide services (e.g., Section 504 of the Rehabilitation Act of 1973).

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on October 24, 2023. Comments should be directed to:

Thomas A. Mayes  
Department of Education  
Grimes State Office Building, Second Floor  
400 East 14th Street  
Des Moines, Iowa 50319-0146  
Phone: 515.281.8661  
Email: [thomas.mayes@iowa.gov](mailto:thomas.mayes@iowa.gov)

### *Public Hearing*

Public hearings at which persons may present their views orally or in writing will be held as follows:

October 24, 2023 9:30 to 10 a.m.	State Board Room, Second Floor Grimes State Office Building Des Moines, Iowa
October 24, 2023 5 to 5:30 p.m.	Room 1070 Des Moines Roosevelt High School 4419 Center Street Des Moines, Iowa

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling 515.281.5295.

### *Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 281—Chapter 60 and adopt the following **new** chapter in lieu thereof:

#### CHAPTER 60

#### PROGRAMS FOR STUDENTS WHO ARE ENGLISH LEARNERS

**281—60.1(280) Definitions.** As used in these rules, the following definitions apply:

*“Bilingual instruction”* refers to a program of instruction in English and the native language of the student designed to enable students to become proficient in English and in academic content areas at an age- and grade-appropriate level.

*“Educational and instructional model”* means an instructional model, strategy, method, or skill that provides a framework of instructional approaches to guide decision making about teaching and learning. Based on the needs of particular students, “educational and instructional model” may include a specific set of instructional services or a fully developed curriculum or other supplementary services.

*“English as a second language”* refers to a structured language acquisition program designed to teach English to students whose native language is other than English, until the student demonstrates a functional ability to speak, read, write, and listen to English language at the age- and grade-appropriate level.

*“English learner”* means the same as defined in Iowa Code section 280.4(1) “b.”

*“Fully English proficient”* means the same as defined in Iowa Code section 280.4(1) “b.”

*“Intensive student”* means the same as defined in Iowa Code section 280.4(1) “b.”

*“Intermediate student”* means the same as defined in Iowa Code section 280.4(1) “b.”

*“Research-based”* means based on a body of research showing that the educational and instructional model, or other educational practice, has a high likelihood of improving teaching and learning. To determine whether research meets this standard for purposes of this chapter, research reports are reviewed for the following:

1. The specific population studied;
2. Research that involves the application of rigorous, systematic, and objective procedures to obtain reliable results and provide a basis for valid inferences relevant to education activities and programs;
3. Whether the research employs systematic, empirical methods that draw on observation or experiment;
4. Reliance on measurement or observational methods that provide reliable and valid data;
5. Inclusion of rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions or inferences drawn;
6. Description of the magnitude of the impact on student learning results; and
7. Inclusion of the level of the review of the study.

## **281—60.2(280) School district responsibilities.**

**60.2(1) *Student identification and assessment.*** A school district shall use the following criteria in determining a student’s eligibility:

*a.* To determine the necessity of conducting an English language assessment, the district includes a home language survey as part of the registration process. If the answers to the home language survey indicate the prominent use of another language in the home, the student is assessed by the district using the state-approved English language proficiency screener assessment to determine eligibility for language development services. A student scoring proficient is not eligible for services. If a student does not score proficient on the screener assessment, the student is determined to be an English learner.

*b.* The student is assessed annually on the state’s approved summative English language proficiency assessment aligned to the state’s English language proficiency standards in order to determine progress and attainment of English. A consistent plan of evaluation that includes ongoing evaluation of student progress will be developed and implemented by the district for each student so identified.

**60.2(2) *Staffing.*** Teachers in an English as a second language (ESL) program will possess a valid Iowa teaching license and an ESL endorsement.

**60.2(3) *English learner placement.*** Placement of students identified as English learners will be in accordance with the following:

*a. Content classes.* Students will be placed in classes with age-appropriate peers. Students will be provided instructional strategies to support content learning at all levels of language proficiency.

*b. English learner program placement.*

(1) Students enrolled in a program for English learners receive systematic English language instruction designed to allow meaningful access to the district’s educational programs.

(2) When students of different age groups or educational levels are combined in the same class, the school ensures that the instruction given is appropriate to each student’s level of educational attainment. Programs will be research-based and grounded in sound language acquisition theory.

(3) A program of bilingual instruction may include the participation of students whose native language is English.

(4) A student exits the English language development program upon scoring proficient on the state-approved annual summative English language proficiency assessment.

(5) All district instructional staff and area education agency (AEA) staff responsible for implementing the educational and instructional models defined in rule 281—60.1(280) receive such professional development as may be necessary to implement those educational and instructional models. Such professional development is delivered in accordance with 281—Chapter 83, including

qualification of providers. In determining whether providers meet the standards in 281—Chapter 83, the following nonexhaustive factors may be considered, as they are relevant to the particular professional development to be provided:

1. ESL endorsement or equivalent;
2. Five years of ESL teaching experience; or
3. A graduate degree in teaching English to speakers of other languages or in a related field.

**60.2(4) *Research-based educational and instructional models.*** Districts will utilize research-based educational and instructional models as defined in rule 281—60.1(280) with English learners so that such students may acquire English proficiency and meet high academic standards.

**281—60.3(280) Department responsibility.** The department of education will provide technical assistance to school districts, including advising and assisting schools in planning, implementation, and evaluation of programs for English learners.

**281—60.4(280) Nonpublic school participation.**

**60.4(1) *General.*** A nonpublic school provides services under this chapter; however, the standard for services, if the nonpublic school does not receive services pursuant to subrule 60.4(2), is to make minor adjustments to curriculum and instruction.

**60.4(2) *Public school services.*** English as a second language and transitional bilingual programs offered by a public school district are available to students attending an accredited nonpublic school located within the district. The district obtains funding for such students in accordance with rule 281—60.5(280).

**281—60.5(280) Funding.**

**60.5(1) *Weighting.*** Weighting for English learners is set forth in Iowa Code section 280.4(3). A student's eligibility for additional weighting is transferable to another district of residence.

**60.5(2) *Supplemental aid or modified supplemental amount.*** In addition to weighting, the school budget review committee (SBRC) may grant supplemental aid or a modified supplemental amount for an unusual need to continue funding beyond the five years of weighting or for costs in excess of the weighting to provide instruction to English learners above the costs of regular instruction.

*a.* A school district of residence may apply to the SBRC by the date specified in rule 289—6.3(257) for supplemental aid or a modified supplemental amount for an unusual need for funding beyond the amount generated from weighting for students identified as English learners who are provided instruction beyond the regular instruction. The eligible supplemental aid or modified supplemental amount will be calculated as the total actual English learner program expenditures for the previous year, reduced by the English learner funding generated in the previous budget year based on the English learner count on the certified enrollment in the previous year, and reduced by any other grants, carryover, or other resources provided to the district for this program.

*b.* A district of residence may apply to the SBRC for supplemental aid or a modified supplemental amount for an unusual need to continue funding beyond the five years of weighting no later than December 1 following the date specified in Iowa Code section 257.6(1) for the certified enrollment. The supplemental aid or modified supplemental amount will be calculated by multiplying the number of resident students identified as English learners who are provided instruction beyond the regular instruction, and who are being served beyond the five years of weighting on the certified enrollment, by the weighting provided under subrule 60.5(1), multiplied by the district cost per pupil in the current year.

*c.* The SBRC will act on the requests described in paragraphs 60.5(2)“*a*” and “*b*” no later than its March regular meeting. If the SBRC grants the district's request for supplemental aid or a modified supplemental amount, the department of management will increase the district's budget authority by that amount.

The SBRC may require the district to appear at a hearing to discuss its request for supplemental aid or a modified supplemental amount.

**60.5(3) *Use of funds.*** English learner funding is categorical funding and follows the general provisions in 281—Chapter 98. Appropriate expenditures for the English learner program are those that are direct costs of providing instruction that supplement, but do not supplant, the costs of the regular curriculum. Appropriate and inappropriate expenditures are set forth in 281—Chapter 98.

**60.5(4) *Annual reporting.*** Districts will include and identify the detail of financial transactions related to English learner resources, expenditures, and carryforward balances on their certified annual report, using the account coding appropriate to the English learner program as defined by the Uniform Financial Accounting Manual for Iowa LEAs and AEAs. Each district submits its certified annual report following the close of the fiscal year but no later than September 15.

These rules are intended to implement Iowa Code sections 256.7(31)“c,” 257.31(5)“j” and 280.4.